**(1998) 01 DEL CK 0026**

**In the Delhi High Court**

**Case No :** Suit No. 2998/92

Risk Capital and Technology Finance Corporation Ltd. APPELLANT

Vs

J.N. Daamodar and Another RESPONDENT

**Date of Decision :** 19-01-1998

**Acts Referred:**

**Citation :** (1998) 93 CompCas 258 : (1998) 73 DLT 315

**Hon'ble Judges :** Kripa Shankar Gupta, J

**Bench :** Single Bench

**Advocate :** Sh. S.S. Gautam, for the Appellant; Sh. Kamal Mehta, for the Respondent

## Judgement

K.S. Gupta, J.—plaintiff seeks a decree for Rs. 7,67,492/- against defendant No. 1 under Order XII Rule 6 CPC.

2. It is alleged in para No. 2 of the plaint that Risk Capital Foundation (In short "RCF") was registered under the Societies Registration Act, 1860. It was converted into a public limited company with the name of Risk Capital and Technology Finance Corporation Ltd. plaintiff w.e.f. 12th January, 1989. In para No. 3 it is stated that by a resolution of the Board of Directors of the plaintiff company, S.R. Nair, General Manager has been authorized to sign and verify the plaint and to institute the suit. In para No. 5 of the plaint, it is stated that defendant No. 1 promoted defendant No. 2 in technical collaboration with M/s Sarcap Abrasife Ceremiques Plastiques (SERCAP) of France with the object of setting up of a project for manufacture of grinding wheels to be located in Industrial Development Area, Patancheru is district Medak (A.P.) defendant No. 2 has been implemented in the suit as a proper party. It is further stated in para Nos. 8 & 9 that defendant No. 1 being unable to provide the entire amount for subscribing to the equity shares of defendant No. 2 against the promoter''s quota from his own resources approached RCF which agreed to lend to him Rs. 8,00,000/- and an agreement was executed in between the dependents and RCF on 26th November, 1982. In para Nos. 7 & 10 it is pleaded that on the

application for grant of loan made by defendant No. 1 RCF sanctioned Rs. 8,00,000/- to defendant No. 1 and this amount was disbursed to him. It is further pleaded in para Nos. 11 & 12 of the plaint that under the aforesaid agreement defendant No. 1 undertook to repay the principal amount of loan in accordance with the amortization schedule set forth in schedule I of the agreement. In terms of clause 3.5 of the said agreement, defendant No. 1 was to pay the service charges on the principle amount of loan outstanding from time to time for first five years''s from the date of disbursement of loan at 1% per annum. This amount was to be increased to 2% per annum from 6th year and to 3% per annum beyond 10 years. Service charges were payable with half yearly rests on 20th June and 20th December of each year. In the event of default of payment either of the principle amount of the service charges on due dates, defendant No. 1 was to pay additional service charges at double the rate. In para Nos. 13 & 20 of the plaint which too are relevant it is alleged that defendant No. 1 committed persistent defaults in paying the installments of the principle loan, and also service charges and additional service charges in breach of clauses 11.1 (a), (b) & (c) of the aforesaid agreement. plaintiff, thus, recalled the entire outstanding amount of loan vide legal notice dated 25th February, 1992. Loan was subject to payment of interest 12% per annum in lieu of service/additional service charges from the date of the recalling of the loan i.e. 25th February, 1992. It is state that sum of Rs. 5,56,900/- towards principle loan amount, Rs. 91,936/- towards service/additional service charges Rs. 985/- towards compound service charges, Rs. 80/- towards terminal service charges and Rs. 37,611/- towards interest from 25.2.92 to 30.7.92, totalling Rs. 7,67,492/- are due from defendant No. 1 which he has failed to pay despite repeated demands. To secure the payment of loan etc., defendant No. 1 is alleged to have pledged the equity shares as detailed in schedule II of the agreement besides executing loan document as per the average made in para Nos. 14 & 17 of the plaint.

3. Defendant No. 1 instead of filing written statement has filed reply affidvit. In paradise reply thereof it is stated that the averments made in paras 2, 3, 7, 8, 9, 10, 11, 12, 14, & 17 being factually correct need no reply. In reply to para No. 5 of the plaint, it is stated that defendant No. 1 is the co promoter Along with APIDC of defendant No. 2 company and it was defendant No.2 who was the immediate beneficiary of the loan sanctioned by the plaintiff. In reply to para No. 13 of the plaint, it is averred that from document No. 11 filed by the plaintiff it is evident that defendant No. 1 was regular in paying the monthly installment from his salary till defendant No. 2 was forced to close it operation on 1st July, 1987. After July 1987 till April 1988, monthly installments were paid with some delay and thereafter those could not be paid since defendant No. 1 was not paid his salary by defendant No. 2 for want of funds. Defendant No. 1 wrote letters dated 20th February, 1986 and 11th April, 1986 requesting the plaintiff to reschedule the payment but those were rejected and the plaintiff chose to recall the loan on 25.2.92. By and large identical plea has been raised in para No. 20. It is further averred that the interest amount claimed by the plaintiff is disputed as it was not

 

discussed at the time of execution of the aforesaid agreement and defendant No. 1 is not liable to pay any interest. In para No. 4 of the reply affidavit it is averred that suit ought to have been filed against APIDC and defendant No. 2 company alone.

4. I have heard the parties'' counsel.

5. Rule 6 of the Order XII CPC under which decree is sought to be passed for the suit amount against defendant No. 1 reads thus :-

(1) "Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party of its motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

6. As is manifest from the pleadings referred to above, it is admitted by defendant No. 1 that loan of Rs. 8,00,000/- was sanctioned in his name and disbursed to him by RFC; that under the agreement dated 26th November, 1982 amount of loan Along with service/additional service charges was to be repaid according to amortization schedule set forth in Schedule I & II of the agreement by his to the plaintiff. It is further admitted by him that towards the repayment of the loan, amount was being deducted from his salary and remitted to the plaintiff by defendant No. 2 and that Rs. 5,56,900/- towards the loan, Rs. 91,936/- towards service/additional service charges Rs. 985/- towards compound service charges and Rs. 80/- towards terminal service charges, totaling Rs. 7,29,881/- were due to the plaintiff on the date the suit was filed. That being so, plea taken by defendant No. 1 in the reply affidavit that the beneficiary of the loan was defendant No. 2 company and it was the liability of defendant No. 2 and APIDC, the other promoter to pay the suit amount, will not come in the way of passing a decree against defendant No. 1 for the suit sum minus Rs. 37,611/- claimed towards interest of which the liability is disputed on the ground of its having not been agreed upon at the time of execution of the agreement dated 26th November, 1982.

Consequently, suit is decreed for recovery of Rs. 7,29,881/- against defendant No.1 under Order XII Rule 6 CPC.

List on ........ for framing of issues.

 